

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 97-0510**  
**Sales and Use Tax**  
**Calendar Years 1993, 1994, 1995**

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**ISSUE(S)**

**I.     Gross Retail Tax – Sales Tax included in Audit Figures**

**Authority:**   IC 6-8.1-5-1

Taxpayer protests the inclusion of sales tax in its proposed audit assessment.

**II.    Use Tax – “Deposits”**

**Authority:**   IC 6-2.5-3-2

Taxpayer protests assessments of use tax on amounts characterized as “deposits.”

**III.   Use Tax – Services**

**Authority:**   IC 6-2.5-3-2

Taxpayer protests proposed assessments of use tax on costs associated with its purchase of services.

**IV.    Use Tax – Catering Services**

**Authority:**   IC 6-2.5-5-20  
                  45 IAC 2.2-4-45

Taxpayer questions proposed assessments of use tax on its purchases of catered meals.

**V.     Gross Retail Tax—Rental of Tangible Personal Property**

**Authority:** IC 6-2.5-3-4, IC 6-2.5-3-6, IC 6-2.5-4-10

Taxpayer questions proposed assessments of use tax on its rental of tangible personal property.

**VI. Gross Retail Tax—Taxes Previously Paid**

**Authority:** IC 6-2.5-3-4

Taxpayer questions proposed assessments of tax on purchases in which sales tax was previously paid.

**VII. Gross Retail Tax—Items Purchased for Resale**

**Authority:** IC 6-2.5-5-8

Taxpayer questions proposed assessments of use tax on items purchased for resale.

**VIII. Gross Retail Tax—Credit Card Purchases**

**Authority:** IC 6-8.1-5-1, IC 6-8.1-5-4

Taxpayer questions proposed assessments of use tax on credit card purchases in which sales tax was previously paid.

**STATEMENT OF FACTS**

Taxpayer, an Indiana corporation, owns a professional hockey team. In operating its hockey franchise, taxpayer derives business income from a variety of sources—e.g., ticket sales, advertising sales (display sign space and program ads), novelties, and program sales. Other business income is generated from concession commissions and expansion team fees. Taxpayer generates additional business income from its training camp operations.

In conjunction with its business operations, taxpayer purchased tangible personal property as well as services from a number of vendors—vendors located both within and without the state. Some purchases qualified for Indiana sales and use tax exemptions, others did not. Concerning those transactions in which taxpayer neither paid sales tax nor remitted use tax to the state, taxpayer failed (or was unable) to provide documentation in support of exempt status. Audit also noted taxpayer's failure in establishing a use tax accrual system.

Taxpayer's collective failures resulted in additional sales and use tax assessments. Taxpayer has protested many of these. An administrative hearing was held. The results of which now follow.

**I. Gross Retail Tax – Sales Tax included in Audit Figures**

**DISCUSSION**

For all years at audit, it was determined that the taxpayer's "sales subject to collection of sales or use tax as agent for the state" already included sales tax. The auditor had previously agreed to adjust the audit.

**FINDING**

Taxpayer's protest is sustained.

**II. Use Tax – "Deposits"**

**DISCUSSION**

Audit assessed use tax on taxpayer payments (transaction dates 09/12/95 and 11/17/95) made to an out-of-state vendor. (BE). Taxpayer has protested one of these assessments—specifically, the 09/12/95 assessment.

Taxpayer contends the September payment represented a refundable deposit rather than a payment for the rental of tangible personal property. Subsequent to audit, taxpayer submitted documentation to support its position. Audit now agrees. The Department, therefore, will remove the contested amount (\$1,075.00) from the total sales figure that is subject to additional use tax assessments.

**FINDING**

Taxpayer's protest is sustained.

**III. Use Tax—Services**

**Discussion**

In conducting its business activities, taxpayer has purchased tangible personal property and personal services from a number of vendors. At the time of audit, taxpayer was unable to provide documentation (primarily invoices) showing whether sales tax had been paid (or should have been paid) on many of these purchases. Audit, therefore, assessed use tax on each undocumented purchase. In response, taxpayer provided additional information to show that some of these "undocumented" purchases were for non-taxable services. To wit:

01/09/95	AM	1,721.56
09/28/95	AF	5,350.00

10/03/95	GP	5,500.00
09/12/95	“	850.00
11/03/95	“	850.00
01/31/95	KE	2,450.00
02/10/95	“	2,450.00
03/31/95	NE	900.00
03/31/95	UE	1,750.00
04/03/95	“	1,000.00
10/25/95	BI	1,300.00
02/21/95	NI	7,395.00

Taxpayer’s outstanding use tax liabilities, therefore, will be adjusted accordingly.

Taxpayer also contests Audit’s assessments of use tax on payments made to SG Productions—(10/18/95 6,500.00; 10/24/95 2,500.00; 01/13/95 3,500.00, and 11/13/95 2,500.00). Taxpayer has submitted a statement to the Department indicating that its payments to SG Productions represented non-taxable personal appearance fees. Taxpayer statement, without more, is insufficient. Taxpayer needs to forward source documents along with an explanation obtained from SG Productions that the payments in question were for personal appearances.

### **Finding**

Taxpayer’s protest is sustained to the extent use tax was assessed on taxpayer’s purchase of the aforementioned documented services. Taxpayer’s protest is sustained, conditionally, with regard to the SG Productions purchases.

## **IV. Gross Retail Tax – Catering Services**

### **Discussion**

During the audit period, taxpayer purchased catered meals. At the time of these purchases, sales tax was not paid. Subsequent to purchase, taxpayer also failed to self-assess and remit use tax on the purchase price of these catered meals. Audit, therefore, proposed additional assessments of use tax.

Sales of food for human consumption are exempt from Indiana sales tax. IC 6-2.5-5-20(a). However, the term “food for human consumption” does not include “meals served by a retail merchant off the merchant’s premises.” IC 6-2.5-5-20(c)(9). The Department has interpreted the language of IC 6-2.5-5-20(c)(9) as applying to those who provide catered meals.

The law provides that the sale of meals shall be taxable whether such meals are served on or of the premises of the retailer. *Accordingly[,] the sale of food or*

*meals by caterers is subject to sales tax.*

45 IAC 2.2-4-45(a). (Emphasis added.)

### **Finding**

Taxpayer's protest is denied.

## **V. Gross Retail Tax – Rental of Tangible Personal Property**

### **Discussion**

On three separate occasions (02/21/95, 10/27/95, 11/29/95), taxpayer rented "music and sound equipment" from an in-state vendor (MA). Taxpayer did not pay sales tax to the vendor at the time of rental. Taxpayer did not self-assess and remit use tax on the rental transactions. Audit, therefore, proposed additional assessments of use tax.

The renting or leasing of tangible personal property in Indiana represents a taxable transaction for purposes of the Indiana gross retail tax. That is, "[a] person...is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person." IC 6-2.5-4-10(a). Because sales tax was not collected at the time of these rental retail transactions, taxpayer should have self-assessed and remitted use tax on the rental payments. (*See IC 6-2.5-3-4 (exemption from use tax if the state gross retail tax has been paid) and IC 6-2.5-3-6 (person who uses...the tangible personal property acquired in a retail transaction is personally liable for the use tax).*) As the vendor did not require taxpayer to pay the former (i.e., sales tax to the vendor) and taxpayer failed to remit the latter (i.e., remit use tax to the Department), the assessments of use tax were proper.

### **Finding**

Taxpayer's protest is denied.

## **VI. Gross Retail Tax – Tax Previously Paid**

### **Discussion**

Taxpayer acquired office equipment in a retail transaction. (02/10/95, SO, \$587.32.) During audit, taxpayer was unable to produce an invoice (or other documentation) to support its contention that sales tax had been paid (i.e., collected by the vendor) at the time of the transaction. Subsequently, the vendor (SO) submitted a one-sentence facsimile to the Department: "Please be advised that [Taxpayer] is charged sales tax."

Taxpayer's burden of production is incomplete. In order for the Department to sustain taxpayer's protest of this issue, taxpayer must acquire and submit the appropriate source documents from the vendor which were used to support the assertion that the vendor charged taxpayer sales tax on its 02/10/95 purchase.

### **Finding**

Taxpayer's protest is sustained if at the time of supplemental audit, taxpayer can produce the requested source documents.

## **VII. Gross Retail Tax – Items Purchased for Resale**

### **Discussion**

Taxpayer, in retail transactions, purchased tangible personal property. At the time of purchase, taxpayer did not pay sales tax. Taxpayer argues that its purchases were exempt from Indiana's gross retail tax because the items in question were purchased for resale.

Taxpayer is correct. If the items were purchased for subsequent resale, the purchase transactions qualify for an exemption from the state's gross retail tax (i.e., sales tax). IC 6-2.5-5-8 states in part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental or leasing in the ordinary course of his business....

The question then becomes one of proof. That is, can taxpayer show the disputed items were subsequently "resold" in the ordinary course of taxpayer's business? The transactions at issue involve purchases of tangible personal property from (AGS), (CP), (IHL), (TF). Taxpayer classified the expenses associated with the purchase of items from these four vendors as "Miscellaneous General & Administrative Expenses." Nothing has been brought to the Department's attention to suggest, prove, or establish that such items have been resold.

### **Finding**

Taxpayer's protest is denied.

## **VIII. Gross Retail Tax –Credit Card Purchases**

### **Discussion**

Taxpayer purchased a variety of items. Taxpayer paid for some of these items with a credit card—specifically, a Visa credit card. Other than the credit card payment receipts, no other

documentation exists (or has been provided to the Department) regarding these purchases. Taxpayer contends the amount entered on each credit card receipt represents the purchase price inclusive of sales tax. Audit, on the other hand, reasons that since sales tax was not explicitly stated on the credit card receipts, use tax was due.

In order for the Department to administer the state's tax laws in a manner consistent with its statutory mandate, a taxpayer "must keep books and records so that the department can determine the amount, if any, of the person's liability...." IC 6-8.1-5-4. Similarly, with regard to tax assessments, "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b).

The Department has invited taxpayer to submit documentation showing that the amounts reported on taxpayer's credit card receipts represented both the purchase price paid as well as sales tax paid. Such proof has not been forthcoming. Consequently, the assessments must stand.

### **Finding**

Taxpayer's protest is denied.